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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/665,442	09/19/2000	Stephen J. Brown	00-0920 / 7553.00055	5890

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EXAMINER	
KOPPIKAR, VIVEK D	

ART UNIT	PAPER NUMBER
3686	

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08/19/2011	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/665,442	BROWN, STEPHEN J.	
	Examiner	Art Unit	
	VIVEK KOPPIKAR	3686	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *21 July 2011*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on _____; the restriction requirement and election have been incorporated into this action.

4)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

5)☒ Claim(s) *47-49,51-62 and 77-110* is/are pending in the application.

5a) Of the above claim(s) _____ is/are withdrawn from consideration.

6)☐ Claim(s) _____ is/are allowed.

7)☒ Claim(s) *47-49, 51-62 and 77-110* is/are rejected.

8)☐ Claim(s) _____ is/are objected to.

9)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

10)☐ The specification is objected to by the Examiner.

11)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

12)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 47, 55-57, 77, 84, 91, 98, 105 and 107-110 are rejected under 35 U.S.C. 102(b) as being anticipated by Fujimoto.

(A) As per claim 47, Fujimoto teaches a system for monitoring a physiological condition of a individual using a computer network (Fujimoto: Abstract), comprising:

(a) a central processing unit (A) having access to one or more databases and (B) configured to (i) read a template program from a database

(ii) generate a first program by modifying the template program in response to input data by modifying the template program in response to input data received via the communication network and (iv) transmit the first program via the communication network (Fujimoto: Figure 4 and Col. 2, Ln. 67-Col. 3, Ln. 25 and Col. 6, Ln. 22-30)

(ii) further programming code configured to assign the first program to the individual (Fujimoto: Co1. 8, Ln. 8-39);

(b) a remote programming apparatus remotely located from and in signal communication with the central processing unit via the communication network, wherein the remote processing apparatus is configured to (i) receive the first program from the communication network and (ii) connect to a measuring device to collect measurement data according to a collect contained in the first program and (iv) to transmit the measurement data to the central processing unit (report)

via the communication network according to a transmit command contained in the first program (Figure 1; Col. 2, Ln. 32-55; Col. 4, Ln. 12-68; Col. 8, Ln. 8-39; Col. 9, Ln. 10-Col. 10, Ln. 10)

(c) a computer remotely located from and in signal communication with the central processing unit via the communication network, wherein the computer is configured to (i) transmit the input data to the central processing unit via the communication network (iii) receive measurement data from the central processing unit via the communication network and (iv) present a report generated based on the measurement data (Fujimoto: Figure 1 and Col. 2, Ln. 32-44; Col. 4, Ln. 50-60).

(B) As per claim 55, in Fujimoto the first program comprises one ore more queries and one or more response choices for the individual (Fujimoto: Col. 4, Ln. 25-58).

(C) As per claim 56, in Fujimoto the remote processing comprises a human interface configured to receive one more responses from the individual to the queries to be communicated to the central processing unit. (Fujimoto: Col. 4, Ln. 14-58 and Col. 8, Ln. 13-39)

(D) As per claim 57, in Fujimoto the remote processing apparatus is sufficiently compact to be hand-held and carried by the individual (Fujimoto: Figure 2 and Col. 2, Ln. 56-68).

(E) As per claims 77, 84, 91, 98, 105, and 107-110 these claim are substantially similar to Claims 47 and 55-57 and are therefore rejected in the same manner as this claim, which is set forth above.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 48-49 and 51-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Number 5,339,821 to Fujimoto as applied to Claim 47.

(A) As per claims 48-49. 51-54 and 58, these claims are rejected in the same manner as set forth in the Board decision mailed on May 25, 2011. The amendments filed to these claims on July 21, 2011 appear to make only minor grammatical changes to the claims and are not adding any new limitations and/or modifying the scope of the claims.

5. Claims 59-62 and 106 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Number 5,339,821 to Fujimoto.

(A) Claim 59 is substantially similar to Claim 47 and is therefore rejected on the same basis as Claim 47, which is set forth above. Claim 59 does include the following feature which is not expressively taught by Fujimoto. Specifically, Fujimoto does not teach that the data relating to the physiological condition of the individual is blood glucose measurement data, however it is well known in the art to measure blood glucose data using a measuring device.

The Office therefore rejects this claim in the same manner as set forth in the Board decision mailed on May 25, 2011.

(B) As per claims 60-62 and 106, these claims are rejected in the same manner as set forth in the Board decision mailed on May 25, 2011. The amendments filed to these claims on July 21, 2011 appear to make only minor grammatical changes to the claims and are not adding any new limitations and/or modifying the scope of the claims.

6. Claims 78-83, 85-90, 92-97 and 99-104 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Number 5,339,821 to Fujimoto as applied to Claim 77, 84, 91 and 98, above, respectively.

(A) As per claims 78-83, 85-90, 92-97 and 99-104 these claims are substantially similar to Claims 60-62 and are therefore rejected in the same manner as these claims, which is set forth above.

Response to Arguments

7. Applicant's arguments filed on July 21, 2011 have been fully considered but they are not persuasive. They will be addressed in sequential order.

(1) Applicant argues that Fujimoto is silent that the list of numbers for the questions is generated by the host computer in response to input data received over telecommunication line and applicant also argues that Fujimoto is silent that the list of numbers for the questions is a modified version of a template program.

The Office would like to note, however, that Fujimoto does in fact teach these features (Col. 2, Ln. 65-Col. 3, Ln. 30).

(2) Applicant argues that Fujimoto does not contain information necessary for the medical apparatus to collect information from a measuring device. However, the Office would like to point out that Fujimoto teaches this feature (Col. 4, Ln. 15-68).

(3) Applicants argue that Fujimoto is silent regarding the script program in question being generated in the host apparatus and then transfer to the medical apparatus over the telecommunication line, however, Fujimoto teaches this feature (Col. 9, Ln. 10-Col. 10, Ln. 10).

(4) Applicant appears to argue against certain alleged inherency arguments. However, the Office has carefully reviewed the decision mailed by the Board on May 25, 2011 and it has not found that the Board made any inherency arguments in their decision. Therefore, the Office is confused as to what argument the applicant is referring to by the use of the applicant's phrase "inherency" argument. Moreover, the Office would like to note that the Board

has either cited specific passages from Fujimoto or mentioned specific limitations present in Fujimoto in rejecting the claimed limitations of this instant application.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vivek Koppikar, whose telephone number is (571) 272-5109. The examiner can normally be reached from Monday to Friday between 8 AM and 4:30 PM.

9. If any attempt to reach the examiner by telephone is unsuccessful, the examiner's supervisor, Jerry O'Connor, can be reached at (571) 272-6787. The fax telephone numbers for this group are either (571) 273-8300 or (703) 872-9326 (for official communications including After Final communications labeled "Box AF").

Another resource that is available to applicants is the Patent Application Information Retrieval (PAIR). Information regarding the status of an application can be obtained from the

(PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAX. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, please feel free to contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Applicants are invited to contact the Office to schedule an in-person interview to discuss and resolve the issues set forth in this Office Action. Although an interview is not required, the Office believes that an interview can be of use to resolve any issues related to a patent application in an efficient and prompt manner.

Sincerely,

/Vivek D Koppikar/

Primary Examiner, Art Unit 3686

8/16/2011